

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

THEODORE DAVIS,)	Case No.: 2:05-cv-632-MHT
)	
Plaintiff,)	THE CITY OF MONTGOMERY’S AND
)	OFFICER SHELLEY WATTS’S ANSWER
vs.)	TO AMENDED COMPLAINT
)	
ARMSTRONG RELOCATION, Lln,)	
EDNA DUMAS, CITY OF)	
MONTGOMERY, et. al.,)	DEMAND FOR JURY TRIAL
)	
)	
Defendants)	

COME NOW the Defendants, City of Montgomery, Alabama and Officer Shelley Watts, in the above-entitled action, by and through undersigned counsel, and in answer to Plaintiff’s Amended Complaint, state as follows:

1. Defendants deny the material allegations contained in paragraphs 1 through 11 (“Facts Common to the Parties”) as well as paragraphs 12 through 141 (Plaintiff’s “First Claim for Relief” through Plaintiff’s “Eleventh Claim for Relief”) and demand strict proof thereof.

AFFIRMATIVE DEFENSES

2. Defendants plead the general issue.
3. Defendants plead and aver that they are entitled to the discretionary function immunity set out in §6-5-338 Ala. Code (1975) on all state law claims.
4. Defendants plead and aver that they are entitled to qualified immunity. McCray v. City of Dothan, 2003 WL 23518420, (11th Cir.2003) (Not reported in F.3d)
5. Defendants plead that the official-capacity lawsuit against Officer S. Watts is duplicitous as a restatement of the claim made directly against the City of Montgomery and due to be dismissed according the principles laid out in Kentucky v. Graham, 473 U.S. 159, 105 S.Ct. 3099, 87 L.Ed.2d 112 (1985).

6. To the extent that Plaintiff seeks equitable relief against these Defendants, the City of Montgomery and Officer Shelley Watts aver that the Plaintiff comes before this Court with unclean hands.

7. Defendants plead and aver that the Plaintiff was contributorily negligent.

8. Defendants plead the affirmative defense of assumption of the risk.

Defendants reserve the right to amend these answers and affirmative defenses as may be allowed by the Court.

JURY DEMAND

The City of Montgomery demands a trial by struck jury on all issues triable of right to a jury.

Respectfully submitted,

/s/ Wallace D. Mills
Wallace D. Mills (MIL 090)
Assistant City Attorney

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document by causing it to be placed in the U.S. Mail, postage prepaid and properly addressed on this 15th day of August, 2005 to the following:

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